

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER f: GENERAL ADMINISTRATION

PART 412
LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS

Section

412.10	Purpose
412.20	Definitions
412.30	Organization and Administration of Licensing Program
412.40	Licensing Requirements
412.50	Grounds for Suspension, Revocation or Refusal to Reinstatement a License
412.60	Investigation, Notice and Proceedings Involving Formal Complaints
412.70	Final Administrative Decision
412.80	Revocation and Suspension of License
412.90	Preliminary Suspension by Board Action
412.100	Reinstatement of Revoked, Suspended or Relinquished License
412.110	Severability of this Part

AUTHORITY: Implementing and authorized by Sections 5c and 5d of the Children and Family Services Act [20 ILCS 505/5c and 5d].

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Section 412.10 Purpose

The purpose of this Part is to set licensing standards, consisting of qualifications, education and training, for those who seek to work in the capacity of a direct child welfare services employee.

Section 412.20 Definitions

"Accredited College or University", for purposes of this Part, means a college or university that has been accredited by a regional or national institution accrediting association recognized by the U.S. Department of Education or non-governmental recognition counterpart.

"Act" means the Children and Family Services Act [20 ILCS 505].

"Administrative Law Judge" or "ALJ" means a licensed attorney who is appointed by the Director of the Department and is responsible for conducting pre-hearings, motion hearings, and the administrative hearing, and issuing a recommended decision.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

"Affirmative Defense" means a reason that, assuming the factual charges are true, operates to limit or excuse the licensure action.

"Another Jurisdiction" means a different entity that issues a license or certification that is subject to regulation by that entity.

"Authorized Representative" means a contractual employee or person, including an attorney, authorized in writing by a licensee to assist in the administrative hearing process.

"Board" means the Direct Child Welfare Service Employee License Board created by Section 5d of the Act.

"Case Management Services" means services that include the assessment and identification of client needs, the identification of available resources to meet client needs, the development of an individualized service plan, the coordination, monitoring and evaluation of services for each client, and advocacy for a client to assure that services and resources are accessible and provided.

"Child Care Act" means the Child Care Act of 1969 [225 ILCS 10].

"Chief Administrative Law Judge" or "Chief ALJ" means the person who is responsible for the supervision of the Administrative Law Judges and the coordination of the administrative hearing process.

"Child Protection Investigation" means a child abuse and neglect investigation that is conducted in accordance with 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect).

"CWEL" means direct child welfare service employee licensure.

"CWEL Investigation" means an investigation authorized by the Emergency Licensure Review Team pursuant to Section 412.60.

"Department" or "DCFS" means the Department of Children and Family Services.

"Department Representative" means the person who is responsible for presenting the Department's case under this Part.

"Direct Child Welfare Service Employee" means a contractual employee or person employed by the Department or a purchase of service agency (i.e., child welfare agency, group home, child care institution, maternity center, and child care facility) who carries assigned cases, conducts child protective investigations, makes recommendations or approves placement decisions, recommends or

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS**

June 1, 2015 – PT 2015.15

approves family reunification decisions, provides casework to intact/family preservation cases, or makes licensing decisions, or anyone who provides direct supervision to any of these employees or makes case-related decisions. Individuals responsible for making licensing decisions for domestic and foreign adoption only agencies and who do not make placement decisions are not required to be licensed under this Part.

"Emergency Licensure Review Team" or "ELRT" means a committee consisting of a representative from the Office of Child Welfare Employee Licensure, a representative from the Office of the Inspector General, and the Chairperson of the Board. In the event the Chairperson is not available, the Vice-Chairperson may stand in for the Chairperson.

"Employee Who Carries Assigned Cases" means an employee assigned responsibility for a case opened in the Statewide Automated Child Welfare Information System (SACWIS) and Child and Youth Centered Information System (CYCIS).

"Exchange of Information", for purposes of this Part, means the rights of any party to request and have access to, in advance of the pre-hearing, any documents, inculpatory and exculpatory evidence, and list of witnesses in the possession of any other party.

"Final Administrative Decision" means the Board's final decision, order or determination in a particular case that affects the legal rights, duties or privileges of participants and that may be further appealed to the circuit court under the Administrative Review Law [735 ILCS 5/Art. III].

"Imminent Danger to the Public" means there is harm or immediate risk of harm to an individual, public funds, or a child, family or community.

"License" or "Direct Child Welfare Service Employee License" means a document issued by the Department that is required to be held in order to practice as a direct child welfare service employee, the qualifications for which are specified in Section 412.40.

"Licensee" means a direct child welfare service employee who holds a direct child welfare service employee license issued by the Department.

"Licensure Action" means the final administrative decision made by the Board and any subsequent court action.

"OCWEL" means the Office of Child Welfare Employee Licensure.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

"Office of the Inspector General" or "OIG" means the Office of the Inspector General of the Department of Children and Family Services.

"Pending Licensure Action" means any activity against a licensee, including whether the licensee is subject to a temporary suspension and whether charges have been issued against the licensee.

"Persons" includes one or more individuals, partnerships, associations or organizations, labor organizations, labor unions, joint apprenticeship committees, corporations, the State of Illinois and its instrumentalities, legal representatives, trustees in bankruptcy or receivers.

"Pre-licensing Review" means a process by which an administrator of OCWEL makes a final administrative decision on a CWEL application.

"Preponderance of the Evidence" means the greater weight of the evidence that renders a fact more likely than not.

"Purchase of Service Provider" or "POS Provider" means an agency (i.e., child welfare agency, group home, child care institution, maternity center and child care facility) or individual offering services to a Department client through a signed contract with the Department.

"Reinstatement" means the restoration by the Board of the revoked, suspended or relinquished license of a direct child welfare service employee.

"Relinquishment" means a voluntary surrender to OCWEL of the direct child welfare service employee license by the licensee.

"Respondent" means the licensee who has been served with a notice of administrative hearing.

"Revocation" means the action by the Board that renders the license of a direct child welfare service employee inoperative.

"Standard of Child Welfare Practice" means the level of performance or provision of services necessary to protect children and State funds from foreseeable and preventable harm and to promote the health, safety, welfare and permanency of children and families.

"Supervision" means responsibility for managing, overseeing, giving direction to, and providing guidance to a direct child welfare service employee that includes approval of critical decisions and other tasks as defined through case management services.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

"Suspension" means a period of time during which a license is inoperative.

"Temporary Services Agency" means an agency that provides a temporary direct child welfare service employee through a contract with the Department or a purchase of service agency.

"Valid Driver's License" or "Valid Driver's Permit" means a license or permit issued by the Secretary of State that is of the proper classification for the purposes for which it is being used and that has not expired, been invalidated, denied, canceled, revoked, suspended or disqualified, or been used after a curfew or nighttime driving restriction (see 92 Ill. Adm. Code 1030.1). For purposes of this Part, a "restricted driver's license" will not be considered a valid driver's license, and a "temporary visitor's license" will be considered a valid driver's license.

Section 412.30 Organization and Administration of Licensing Program

a) The Department shall:

- 1) verify that individuals applying for a license meet the requirements of Section 412.40(b) and (f);
- 2) authorize examinations that fairly test the knowledge and skills of applicants to be a direct child welfare service employee;
- 3) maintain licensing files for applicants and persons licensed by the Department to be direct child welfare service employees;
- 4) maintain rosters of names and addresses of all currently licensed direct child welfare service employees and all persons whose licenses have been suspended or revoked;
- 5) provide Licensing Action and Pending Licensing Action concerning specific individuals to prospective employers within three business days after a request is received. Licensing status information shall include, but not be limited to, date of issuance and pending or implemented licensure action against the licensee within the prior 10 years, including charges issued by the Department;
- 6) provide known child welfare employers with information within three business days concerning any licensure action or any final administrative decision;
- 7) obtain written statements from the applicant that attest that he or she is not in default of an educational loan in accordance with the Educational Loan Default Act [5 ILCS 385/2] and that he or she is not more than 30 days delinquent in paying a child support order as specified in the Illinois Administrative Procedure Act [5 ILCS 100/10-65(c)];

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

- 8) determine whether to issue licenses; and
- 9) accept relinquishments of licenses and record in the CWEL file if the relinquishment was received during an open CWEL investigation or CWEL proceeding and any subsequent appeals.

b) The Department and POS agencies shall:

- 1) request a child abuse and neglect prior history check and a criminal background check on a prospective direct child welfare service employee prior to hiring the employee or as soon afterwards as is reasonably practicable;
- 2) verify the license status of job applicants/newly hired direct child welfare service employees with OCWEL prior to assigning a caseload to the employee;
- 3) report licensure violations by direct child welfare service employees to OCWEL in accordance with Section 412.50; and
- 4) prohibit unlicensed workers from providing or supervising case management services, investigating or supervising child protection investigations, making licensing decisions or supervising licensing workers or otherwise performing direct child welfare services work as set out in this Part.

c) Direct Child Welfare Service Employee License Board

The Board shall consist of nine members appointed by the Director of the Department. All persons appointed to the Board shall be residents of the State of Illinois and serve in a voluntary and unpaid capacity.

- 1) The nine member Board shall be composed of five licensed professionals from the field of human services, as outlined in 89 Ill. Adm. Code 401.Appendix G, at least two of whom shall be employed in the private not-for-profit sector and at least one of whom shall be from the public sector; two members who serve on the faculty of an accredited university and have child welfare experience; and two members of the general public who are not licensed under this Part or similar rule. Members chosen from the public must clearly represent consumer interests.
- 2) All licensed professionals and faculty members must be in good standing within their profession. All members of the Board shall have no pending or indicated reports of child abuse or neglect, and no pending or criminal conviction of any offenses stipulated under the Criminal Code of 2012 [720 ILCS 5] and listed in Section 4.2(b) of the Child Care Act.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS**

June 1, 2015 – PT 2015.15

- 3) Board members are to recuse themselves from sitting on any matter involving an employee of a child welfare agency at which the Board member is an employee or contractual employee or any matter involving a person known by the Board member, or if the member has a personal or professional interest in the matter that would interfere with the Board member's ability to exercise objectivity or has any bias against the involved person.
- 4) Members appointed to the initial Board shall serve for one, two or three years. All successive appointments shall be for a term of three years. No member shall be reappointed if his or her reappointment would cause any conflict of interest or cause that person to serve on the Board for longer than six consecutive years. Appointments to fill expired vacancies shall be made in the same manner as original appointments.
- 5) Board membership shall have reasonable representation from different geographic areas of Illinois.
- 6) The Director may terminate the appointment of any member for good cause, which includes, but is not limited to, unjustified absences or failure to meet Board responsibilities, failure to recuse himself or herself as required by subsection (c)(3), or failure to maintain the professional position outlined in subsection (c)(1).
- 7) The Board shall make recommendations to the Director regarding licensure rules.
- 8) The Board shall have the authority to preliminarily suspend before a hearing, or revoke or suspend after a hearing under Section 412.60, an employee's license. The Board may also reinstate licenses under Section 412.100. Votes regarding final determinations can be cast in person, by telephonic or electronic means, or by mail, at the discretion of the Chairperson and upon notification of all members. A simple majority of the members appointed and serving is required when Board members vote. A majority of the quorum is required when a recommendation is voted on during a Board meeting.
- 9) The Director shall designate the Chairperson and Vice-Chairperson of the Board annually.
- 10) Members of the Board shall be reimbursed for all authorized legitimate and necessary expenses incurred in attending the meetings of the Board.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

- 11) A majority of the currently appointed and serving Board members shall constitute a quorum. A vacancy in the membership of the Board shall not impair the right of a quorum to perform all of the duties of the Board.
- 12) Members of the Board shall have no individual liability in an action based upon any proceeding or other activity performed in good faith as a member of the Board.
- 13) The Director may assign Department employees to provide staff services to the Board.

Section 412.40 Licensing Requirements

a) Direct Child Welfare Service Employees Requiring Licensure

Direct service casework managers, supervisors and caseworkers who carry assigned cases and/or provide case management services for the purpose of investigation, casework, intact/family preservation, permanency or licensing decisions shall obtain a license to practice as a direct child welfare service employee. Individuals responsible for making licensing decisions for domestic and foreign adoption only agencies and who do not make placement decisions are not required to be licensed under this Part.

b) Qualifications for Licensure

The Department shall issue a license to an applicant who:

- 1) has applied in writing on the prescribed form and has not provided false information;
- 2) has had a background check completed in accordance with 89 Ill. Adm. Code 385 (Background Checks), has no pending or indicated reports of child abuse or neglect, and has no pending or criminal charge that is a bar to employment under Section 4.2 of the Child Care Act. Any other conviction or pending criminal action will be assessed according to Section 4.2 of the Child Care Act and 89 Ill. Adm. Code 385;
- 3) is a graduate of an accredited college or university with a minimum of a bachelor's degree or provides documentation of foreign equivalency, as determined by the Council for Higher Education Accreditation, One Dupont Circle NW, Suite 510, Washington DC 20036, of a minimum of a bachelor's degree from a college or university outside of the United States;
- 4) has completed a prescribed Department pre-service course of training prior to the prescribed licensing examination;

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

- 5) has passed the examination to practice as a direct child welfare service employee as authorized by the Department (a score of at least 70% is required to pass the examination);
- 6) is not delinquent in paying a child support order as specified in Section 10-65 of the Illinois Administrative Procedure Act;
- 7) is not in default of an educational loan in accordance with Section 2 of the Educational Loan Default Act;
- 8) does not pose a possible danger to State resources or clients;
- 9) has not engaged in conduct described in Section 412.50;
- 10) has not relinquished his or her license during a licensure investigation or after the commencement of a licensure hearing, or had his or her license revoked after the commencement of a licensure hearing. An applicant who has had his or her license revoked or relinquished under these circumstances must first go through the reinstatement process and shall file a new application and comply with other qualifications in this subsection (b); and
- 11) holds a valid driver's license and has not been convicted of two or more moving traffic violations under the Illinois Motor Vehicle Code [625 ILCS 5], and has not been convicted of driving under the influence of alcohol or other drugs within the year prior to application for licensure.

c) Referral to the Office of the Inspector General for Pre-Licensing Investigation

OCWEL may refer applicants to the Department's OIG for investigation during the licensing process if information indicates that the applicant has engaged in acts that may be grounds for suspension, revocation or refusal to reinstate a license, as described in Section 412.50. The OIG will complete a limited investigation of the applicant within 30 days after the referral and provide the investigation findings to OCWEL. OCWEL may extend the time of the limited investigation for good cause. If OCWEL finds that the information from the OIG investigation provides the basis for refusal to issue a license, OCWEL may refuse to issue a license to the applicant.

d) OCWEL may recall a license that was issued in error within 10 days after issuance.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

e) Licensing Examination

- 1) The licensing examination shall be administered by the Department or designated testing service. It shall cover knowledge and skills including, but not limited to, understanding of child welfare laws and regulations applicable in Illinois, methods of protecting the safety and well-being of children, and the importance of, and techniques for, coordination of services.
- 2) The Department shall notify the employee and employer of the testing outcome within seven calendar days after the testing date.
- 3) Applicants shall be allowed two attempts within one year to pass the written examination.

f) License Restrictions and Limitations

- 1) All direct child welfare service employees and supervisors must obtain a license under this Part to be employed as a direct child welfare service employee.
- 2) Licensed direct child welfare service employees are responsible for remaining current with changes in law, rule and procedures governing child welfare services.
- 3) Licensees must notify OCWEL of any changes in their address. Licensees who fail to notify OCWEL of any address change will have waived their right to object to improper service when the Department provides service to the last address reported to OCWEL by the licensee.
- 4) This license does not allow any person to represent herself or himself as a licensed social worker or licensed clinical social worker as defined under the Clinical Social Work and Social Work Practice Act [225 ILCS 20]. The license is solely for the purpose of employment with the Department or with a POS agency or a temporary services agency as a direct child welfare service employee.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

g) Voluntary Relinquishment of a License

- 1) A licensee may voluntarily relinquish his or her license;
- 2) A license voluntarily relinquished during a pending licensure or disciplinary investigation, administrative proceeding, or subsequent court action shall be recorded in the licensee's CWEL file as relinquished during licensure or disciplinary investigation, administrative proceeding, or subsequent court action;
- 3) Voluntary relinquishment of a license must be filed with OCWEL on a prescribed form. The licensee must acknowledge on the form that reinstatement will be subject to consideration of the facts disclosed in any pending licensure investigation or administrative proceeding. Voluntary relinquishment does not divest the OIG of the jurisdiction to complete a pending investigation;
- 4) An application for a license from an applicant who previously relinquished his or her license shall be considered a request for reinstatement in addition to an application for license.

Section 412.50 Grounds for Suspension, Revocation or Refusal to Reinstatement of a License

a) Causes for Licensure Action

The Board may suspend, revoke or refuse to reinstate, and the Department may refuse to issue, any license issued by the Department for any of the following acts:

- 1) violation or negligent disregard of this Part;
- 2) a charge or criminal conviction of any offenses stipulated under the Criminal Code of 2012 and listed in Section 4.2 of the Child Care Act (a pending charge may result only in suspension or temporary refusal to reinstate);
- 3) making any material misrepresentation relevant to obtaining a license, including, but not limited to, failure to certify on the form, or a false statement, that the applicant is not more than 30 days delinquent in complying with a child support order;
- 4) an egregious act that demonstrates incompetence, unfitness or blatant disregard for one's duties in providing direct child welfare services;

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

- 5) a pattern of deviation from a standard of child welfare practice that could result in an injury to a child or a pattern of dishonesty that places State funds or records at risk;
- 6) aiding or assisting another person in violation of any provision of this Part;
- 7) failing to provide information or documents regarding a licensure investigation or license within 30 days after a written request by the OIG or the Department;
- 8) habitual or excessive use of, or addiction to, alcohol, narcotics, stimulants, or any other chemical agent or drug that results in a worker's inability to practice with reasonable judgment, skill or safety. This shall not include any person who has sought, will seek or is receiving substance abuse treatment if it does not impact on his or her ability to practice with reasonable judgment, skill or safety;
- 9) discipline by another state or national licensing entity when the grounds for suspension, revocation or refusal to reinstate are substantially the same as at least one of the grounds established in this Section;
- 10) falsification of case records, court reports or court testimony;
- 11) failing to report an instance of suspected child abuse or neglect as required by the Abused and Neglected Child Reporting Act (ANCRA) [325 ILCS 5];
- 12) being named as an alleged perpetrator in a pending child abuse or neglect report;
- 13) being named as a perpetrator in an indicated report by the Department under ANCRA unless or until the indication is reversed on a appeal or administrative court review in accordance with 89 Ill. Adm. Code 336 (Appeal of Child Abuse and Neglect Investigation Findings); or
- 14) has not been convicted of more than two offenses against traffic regulations governing the movement of vehicle within a 12-month period or being convicted of reckless driving, driving under the influence of alcohol or other drugs, or manslaughter or reckless homicide resulting from the operation of a motor vehicle.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

b) Other Causes for Licensure Action

The Department shall refuse to issue and the Board may suspend, revoke or refuse to reinstate any license for the following causes:

1) Mental Health and Developmental Disabilities

Involuntary admission of a licensee to a mental health facility as provided in the Mental Health and Developmental Disabilities Code [405 ILCS 5] shall result in an automatic suspension of his or her license by the Board. The license may be reinstated by the Board after a court finding that the licensee is no longer subject to involuntary admission;

2) Delinquent Compliance with a Child Support Order

Upon a final finding of delinquency or failure to comply with a subpoena or warrant, the Department shall refuse to issue a license to, or the Board shall refuse to reinstate or shall suspend or revoke the license of, a person who is more than 30 days delinquent in paying a child support order as specified in Section 10-65 of the Illinois Administrative Procedure Act. The license may be reinstated by the Board after a finding that the licensee is no longer delinquent in paying a child support enforcement order;

3) Default of Educational Loan

The Department shall refuse to issue and the Board shall refuse to reinstate, or shall suspend or revoke, the license of a person who is found to be in default of an educational loan in accordance with Section 2 of the Educational Loan Default Act. The license may be reinstated by the Board after a finding that the licensee is no longer in default of the educational loan; or

4) Transporting a Child without a Valid Driver's License

The Board shall immediately revoke the license of any employee who, in the course of performing his or her duties, has transported a child or children with a motor vehicle without having a valid driver's license.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

Section 412.60 Investigation, Notice and Proceedings Involving Formal Complaints

a) Complaints

Complaints shall be made to OCWEL for determination as to whether the complaint meets the grounds for licensure action in Section 412.50. The complaint shall be confidential within OCWEL, the Board, ELRT and the OIG, unless otherwise ordered by a court or Administrative Law Judge of competent jurisdiction. ELRT shall review the complaint to determine whether the complaint meets the description of one or more of the grounds for licensure action in Section 412.50. If a majority determines that the complaint meets the description of one or more of the grounds for licensure action, the report shall be forwarded to the OIG for investigation.

b) Office of the Inspector General

1) Investigation

The OIG shall investigate formal complaints made to the Board regarding the actions of any person holding or applying for a license. The OIG may impound (pursuant to 89 Ill. Adm. Code 431.130) and subpoena (pursuant to 20 ILCS 505/35.5 and 89 Ill. Adm. Code 430) documents relevant to an investigation authorized under this Part. The OIG will review documents and interview relevant persons to determine whether a licensed employee violated any of the provisions of this Part. If the OIG determines that licensure action is warranted, the OIG shall provide a Notice of Administrative Hearing pursuant to subsection (c), provided, however, that no adverse licensure action (other than preliminary suspension in accordance with Section 412.90) can be made before the employee has been notified of the allegations in accordance with this Section and given an opportunity to respond.

2) Proposed Action

A) If, after an investigation, the OIG determines that licensure action is inappropriate but that there is a basis for disciplinary action, it shall proceed according to Section 35.5 of the Act. If the investigation discloses possible criminal acts or violations of rules, the OIG may also refer the investigative findings or the investigation to the appropriate law enforcement or regulatory agency. If the OIG determines that licensure action may be appropriate, the OIG will provide a Notice of Administrative Hearing pursuant to subsection (c); provided, however, that no adverse licensure action (other than preliminary suspension in accordance with Section 412.90) can be made before the employee has been notified of the allegations in accordance with this Section and given an opportunity to respond.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

B) If the investigation does not provide a basis for adverse licensure action, disciplinary action or referral to law enforcement or other regulatory enforcement, the OIG will notify OCWEL, in writing, and the licensee if the licensee was informed of the investigation. OCWEL will also inform any known child welfare employer of the closure of the licensure investigation if the employer had been notified of the investigation.

c) Notice of Administrative Hearing

- 1) When the OIG requests, the Administrative Hearing Unit shall identify the date, time and place for an administrative hearing, and shall assign an ALJ to the case. The OIG shall then notify the licensee in writing, at least 30 calendar days before the scheduled hearing date, of the Department's intent to revoke or suspend his or her license and of the right of the licensee to an administrative hearing. The notice shall be sent to the licensee, at the most recent address provided to OCWEL by the licensee or the address provided to the OIG during the investigation. The notice shall also be sent to the Administrative Hearing Unit. The notice to the licensee shall be served by personal delivery by certified or registered mail. Service in conformance with this subsection (c)(1) shall be sufficient to prove notice.
- 2) The notice shall contain the following:
 - A) the date, time, place and nature of the hearing;
 - B) the name of the licensee and the address of the licensee, if not represented by counsel, or the address of the counsel, if represented by counsel;
 - C) the name and business address of the Department's representative, if any, at the administrative hearing;
 - D) a citation to the provision in Section 5c of the Act that grants the Department the legal authority and jurisdiction to hold the hearing;
 - E) a reference to the particular Sections of the statutes and administrative rules involved;
 - F) a short and plain statement of the matters that are the basis of the charges;

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

- G) the reasons that may be deemed an abandonment under subsection (n) and the cause for the entry of a final administrative decision before hearing, including the failure to file an answer to the notice of administrative hearing or the failure to appear at a pre-hearing or hearing without having first obtained a continuance;
- H) the docket number assigned to the case;
- I) the name and mailing address of the ALJ and any other parties, unless the names or addresses are confidential under the Abused and Neglected Child Reporting Act [325 ILCS 5] or the Department of Children and Family Services Act [20 ILCS 505], pursuant to provision found in 89 I ll. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services);
- J) a statement of the action sought, including but not limited to revocation, suspension or refusal to renew a license; and
- K) date the notice was filed with the Administrative Hearing Unit.

d) Answer to the Notice of Administrative Hearing

The respondent shall serve an answer, within 15 calendar days after the date on which the Notice of Administrative Hearing is sent, on the Administrative Hearing Unit. The answer shall be in writing and signed by the respondent or the respondent's authorized representative, and shall include the respondent's telephone number. The answer shall admit or deny the charges or shall state that the respondent lacks sufficient information to admit or deny the charges. If the respondent fails to admit, deny or assert that respondent lacks sufficient information to answer, the charge shall be deemed admitted as true. The answer shall also provide any information that establishes a factual basis for an affirmative defense to the charges. Failure to do so may result in the ALJ barring the respondent from presenting the defense at any hearing on the licensing matter.

e) Rights and Responsibilities in Administrative Hearings

- 1) Appearance/Authorization to Represent
 - A) A respondent may bring an authorized representative and witnesses to the hearing. The respondent shall pay expenses of a representative or respondent's witnesses.
 - B) No person shall be allowed to act as an authorized representative in any matter contested before the Administrative Hearing Unit

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

without first filing a written authorization with the Administrative Hearing Unit. The authorization shall be effective only for the particular matter in which it is filed, unless the matter has been consolidated with other proceedings by order of the Chief ALJ or the assigned ALJ.

- C) No particular form is required to file a written authorization for representation. However, all authorizations filed with the Administrative Hearing Unit shall be notarized, signed by the respondent and authorized representative, and identify:
 - i) the name, address and phone number of the party represented;
 - ii) the name, address and phone number of the authorized representative; and
 - iii) the administrative hearing in which representation is authorized.

- D) An authorized representative may exercise the rights of the respondent in the hearing process. These rights include the right to:
 - i) review and copy material placed in the record during the proceeding;
 - ii) receive Department, Board and administrative hearing notices;
 - iii) request and receive discovery materials;
 - iv) speak, or otherwise be heard, on behalf of the respondent in the administrative hearing process; and
 - v) take any other actions permitted a respondent during the hearing process.

- 2) During the administrative hearing, the respondent and the Department have the right to:
 - A) present and question witnesses;
 - B) present any information relevant to the issues;

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

- C) question or disprove any information, including an opportunity to question opposing witnesses; and
 - D) dispose of any disputed issue by stipulation, agreed settlement, consent order or default.
- 3) Before and during the administrative hearing:
- A) the respondent may withdraw from the hearing process and relinquish the license in accordance with Section 412.40(g); and
 - B) the Department may amend the charges subject to due process.
- 4) The proceedings shall be recorded or conducted before a certified court reporter.

f) Confidentiality during the Hearing Process

- 1) The ALJ has the right to exclude from an administrative hearing any individual who, or agency that, does not have the right of access to the information being presented in accordance with the federal Adoption Assistance and Child Welfare Act (42 USC 671), the Children and Family Services Act, ANCRA, and any other pertinent Act.
- 2) The ALJ has the authority to divide the hearing into separate segments that deal with issues of other parties in order to preserve confidentiality as mandated under applicable statutes and rules and to prohibit discussion or introduction of evidence that is outside of the scope of the issues being presented in that segment.
- 3) Confidentiality During the Hearing Process

The Department has an affirmative duty to protect the confidentiality of personal information, in accordance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services), the federal Adoption Assistance and Child Welfare Act and Section 10-60 of the Illinois Administrative Procedure Act [5 ILCS 100]. Confidentiality shall be preserved throughout the administrative hearing, the transmittal of the ALJ's recommendation to the Board and the release of the final administrative decision. None of the documents, including the ALJ's recommendation to the Board, shall be subject to the Freedom of Information Act [5 ILCS 140]. The final administrative action, however, shall be public information.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

g) The Administrative Hearing and Pre-hearing Conference

1) Rules of Evidence

In an administrative hearing, the OIG carries the burden of proving, by a preponderance of the evidence, grounds for suspension, revocation or refusal to reinstate license (Section 412.50).

- A) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, unless precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.
- B) Previous statements made by a child relating to abuse or neglect shall be admitted as hearsay exceptions.
- C) In addition to any other hearsay exception that exists in Illinois, a statement may be admitted if it has circumstantial guarantees of trustworthiness, and if the probative value of the statement outweighs any prejudice resulting from an inability to cross-examine the declarant.

2) Motions

- A) Copies of the motion shall be served upon the ALJ, the Administrative Hearing Unit, and the opposing party at least 10 days before the date set for hearing.
- B) The ALJ may hear any motion that is consistent with administrative practice and procedure.

3) The Chief ALJ or the ALJ may schedule a pre-hearing conference.

- A) The ALJ shall address the following issues during the pre-hearing conference:
 - i) whether parties have exchanged lists of the persons who will provide testimony during the administrative hearing;

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS**

June 1, 2015 – PT 2015.15

- ii) whether witnesses should be scheduled to testify at specific times;
 - iii) whether the parties have or will have exchanged records or documents prior to the administrative hearing;
 - iv) whether the parties can agree upon any facts as true;
 - v) motions filed by any party; and
 - vi) the need for an interpreter for a party whose primary language is not English or who requires communication assistance.
- B) The pre-hearing conference shall be convened by telephone unless the ALJ and the parties agree to an in-person pre-hearing conference. The ALJ shall place all telephone calls. The cost of telephone calls shall be borne by the Department. The Administrative Hearing Unit shall arrange for the respondent to use a telephone at a Department Field Office if the respondent has previously notified the Department that he/she does not have access to a telephone.
- C) The ALJ may order the parties to attend the pre-hearing conference in person without the consent of all parties. If the ALJ orders personal attendance, the ALJ shall:
- i) give written notice to the parties of the date, time and place of the pre-hearing conference; and
 - ii) hold the pre-hearing conference at a place and time convenient for the parties.
- h) The Administrative Law Judge**
- 1) Appointment or disqualification of the Administrative Law Judge is subject to the provisions of Sections 10-20 and 10-30 of the Illinois Administrative Procedure Act.
 - 2) The Chief ALJ shall select a trained, impartial ALJ from the available pool to conduct the administrative hearing. The ALJ shall:
 - A) be an attorney licensed to practice law in the State of Illinois;

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS**

June 1, 2015 – PT 2015.15

- B) possess knowledge and information acquired through training and/or experience relevant to the fields of child and family welfare law and administrative law, including familiarity with Department rules, procedures and functions;
 - C) not have been involved in the decision to take the action being contested or have rendered legal advice to the decisionmaker on the issue; and
 - D) not have a personal or professional interest that interferes with exercising objectivity or have any bias against the parties or issues contested. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.
- 3) **Functions and Authority of the Administrative Law Judge**
The ALJ shall have all authority allowed under Article 10 of the Illinois Administrative Procedure Act, which includes, but is not limited to, the authority to:
- A) conduct a fair, impartial and formal hearing;
 - B) inform participants of their individual rights and their responsibilities;
 - C) conduct pre-hearing telephone conferences between the parties or their authorized representatives to provide information about the procedural aspects of the hearing, narrow the issues and discuss possible stipulations and contested points of law, in order to expedite the actual hearing;
 - D) take necessary steps to develop a full and fair record that contains all relevant facts;
 - E) administer an oath or an affirmation to all witnesses;
 - F) quash or modify subpoenas issued by the Administrative Hearing Unit for good cause, which includes, but is not limited to, relevance, scope, materiality and emotional harm or trauma to the subpoenaed witness;
 - G) preserve all documents and evidence for the record, subject to provisions of Section 10-35 of the Illinois Administrative Procedure Act;

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

- H) rule upon evidentiary issues and contested issues of law at the hearing or take matters under advisement pending issuance of the written opinion and recommendation;
- I) order the removal of any person from the hearing room who is creating a disturbance, whether by physical actions, profanity or conduct, that disrupts the hearing;
- J) identify the issues, consider all relevant facts and receive or request any additional information necessary to decide the matter in dispute, including, but not limited to, the submission of briefs, memoranda of law, affidavits or post-hearing briefs; and
- K) for good cause shown, on the judge's own motion or the motion of any party, allow a witness to testify at the administrative hearing by telephone.

i) Consolidating and Severing Issues and Parties

- 1) When common issues of fact or law are raised in more than one set of charges or involve more than one licensee, the Chief ALJ or ALJ may consolidate the charges into a single group hearing. Individuals shall be permitted to present their own cases separately. Nothing in this Section shall override confidentiality considerations.
- 2) The Chief ALJ or ALJ may also combine into one hearing all sets of charges, appeals and issues involving a single respondent, whether arising under this Part or any other Part.
- 3) The Chief ALJ or ALJ, if required for the fair and efficient administration of the hearing or to prevent possible prejudice to the respondent, may sever any party or any issue from the consolidated hearing. The party or issue severed from the consolidated hearing shall be heard separately.
- 4) The Chief ALJ or ALJ shall decide the order in which to hear any party, appeal or issue that has been severed.
- 5) The Chief ALJ may delegate the power to hear and decide any action to consolidate or sever under this Section to any ALJ who has been assigned to hear one or more of the appeals.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

j) Exchange of Information

- 1) All requests for information must be in writing and sent to the party from whom the information is sought at least 20 calendar days in advance of the hearing. The requestor must send a copy of the request to the Administrative Hearing Unit. A party, without leave of the ALJ, may request from any other party:
 - A) a list of witnesses to be called at the hearing; and
 - B) copies of all documents that a party intends to present to the ALJ at the hearing.
- 2) Copies of all requests for information shall be filed with the Administrative Hearing Unit. All requests for information shall be answered within 10 calendar days after receipt unless, upon good cause shown, leave is sought for additional time to answer.
- 3) If a party fails to answer a request for information, the ALJ may enter any just and appropriate order to advance the disposition of the matter.
- 4) Hearings shall not be delayed to permit the exchange of information unless timeliness and due diligence is shown by the party seeking the information.

k) Continuances

- 1) The ALJ shall grant no continuance of a scheduled hearing or pre-hearing conference to any party except for good cause shown. Good cause includes, but is not limited to:
 - A) sickness or death in the immediate family of the respondent, the Department representative or the authorized representative of the respondent;
 - B) court or administrative hearing dates scheduled prior to the issuance of the notice of hearing;
 - C) the need to secure counsel;
 - D) the unavailability of a witness; and
 - E) adding or amending the charges in the complaint.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS**

June 1, 2015 – PT 2015.15

- 2) No request for a continuance shall be granted without notice to all parties and an opportunity to object on the record. All motions for continuance shall be disposed of by written order.
- 3) If a continuance is requested due to the lack of a certified court reporter or interpreter, the party seeking a continuance must demonstrate due diligence in seeking that service for the hearing date.
- 4) Notices of a continued hearing date need not include any restatement of the rights of the parties.

l) Attendance of Witnesses

A party or ALJ may subpoena a witness by requesting that the Chief ALJ issue a subpoena to compel the attendance of the witness. The request shall be made at least 14 calendar days before the hearing. Requests for subpoenas made less than 14 calendar days before the hearing require the leave of the Chief ALJ or the ALJ. Witness fees and travel expenses for persons other than Department, private agency or temporary services agency employees are the responsibility of the party requesting the subpoena.

m) Grounds for Entry of a Final Administrative Decision before Hearing

The Chief ALJ or the ALJ shall recommend licensure action to the Board, without further hearing, when:

- 1) the Department, the Board or a court of competent jurisdiction has already made a final decision on the issue as a result of a previous administrative hearing or court decision;
- 2) the respondent does not file an answer within 15 calendar days after the day the Notice of Administrative Hearing was filed with the Administrative Hearing Unit;
- 3) the respondent has stated that the respondent does not contest the entry of adverse licensure action;
- 4) the right to an administrative hearing has been abandoned pursuant to subsection (n); or
- 5) the issue is otherwise not within the jurisdiction of the Administrative Hearing Unit.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

n) Abandonment of Right to Administrative Hearing/Default

- 1) The Administrative Hearing Unit shall find that the respondent has abandoned the right to an administrative hearing when:
 - A) the respondent has not filed an answer to the Notice of Administrative Hearing within 15 calendar days after the Notice was filed with the Administrative Hearing Unit;
 - B) the respondent or the respondent's authorized representative has failed to appear at the scheduled pre-hearing or hearing and failed to respond to the written notification of the finding of abandonment within 30 days, showing good cause why the finding should be vacated;
 - C) the respondent failed to notify OCWEL or the Chief ALJ or ALJ of a change of address and a Notice of Administrative Hearing, sent to the respondent's last known address, was returned as undeliverable, unclaimed, refused, moved or no forwarding address; or
 - D) the respondent has filed a relinquishment of license on the form prescribed by the Department.
- 2) The Administrative Hearing Unit shall find that the Department or the respondent has abandoned the right to an administrative hearing when the Department or the respondent or the respondent's authorized representative, without good cause, fails to appear at a hearing or pre-hearing conference without having received a continuance.
- 3) Any party seeking to vacate a finding of abandonment under subsections (n)(1)(A) and (B) shall file a motion within 30 days after notice of the entry of a finding of abandonment or default showing good cause why the party failed to appear. A recommendation to the Board regarding licensure action will be entered:
 - A) at the end of 30 days, if the respondent does not file a motion to vacate; or
 - B) when the Administrative Hearing Unit determines that good cause for the failure to appear does not exist.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

o) Record of an Administrative Hearing

The Chief ALJ or ALJ shall maintain the record of the administrative hearing and the final administrative decision. All final administrative decisions shall be available to any party for public inspection during regular business hours. However, confidential information shall be deleted in accordance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services).

p) Recommendation of Administrative Law Judge

- 1) The ALJ shall prepare a recommendation, along with findings of fact and conclusions of law, as to whether to suspend the respondent's license, revoke the respondent's license, allow the respondent's license to continue in good standing, or take any other action regarding the license. The ALJ shall submit the hearing record and recommendation to the Board and all parties. The parties shall have 20 calendar days to file exceptions and a brief to the recommendation of the ALJ. The exceptions shall be filed with OCWEL for consideration by the Board. The parties shall have 20 additional calendar days to respond to the exceptions and brief filed by any other party.
- 2) The Board shall accept the ALJ's findings of fact as true unless it finds that the findings of fact are contrary to the manifest weight of the evidence. The Board may:
 - A) issue a final administrative decision by accepting the recommendation of the ALJ;
 - B) issue a final administrative decision by making its own findings of fact or conclusions of law that shall be based solely on the record; or
 - C) remand the case to the Administrative Hearing Unit for further proceedings. When the Board remands a case, it shall issue a written order specifying the nature and scope of the additional proceedings. The Administrative Hearing Unit shall schedule a new hearing date that shall be between 15 and 90 calendar days after the date of the remand order. The Administrative Hearing Unit shall notify all parties of the new date. The ALJ shall issue a supplemental recommendation and shall serve a copy on all parties. The Board shall review the supplemental recommendation in the same manner as the initial recommendation.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

Section 412.70 Final Administrative Decision

The final administrative decision shall include the name of the person responsible for compliance, if applicable, and shall advise the parties that, under the provisions of the Administrative Review Law, they may seek judicial review of the final administrative decision if it is unfavorable to them, within the statutory time frame. The Board's final administrative decision must be distributed to the licensee, the OIG, the Department's representative, the employer of the licensee, the Administrative Hearing Unit, and the ALJ.

Section 412.80 Revocation and Suspension of License

- a) Upon the Board's final administrative decision to revoke or suspend a license, the licensee shall immediately surrender his or her license to the Department. Upon failure to do so by the licensee, the Department shall provide for deactivation of licensure. A suspension (other than a preliminary suspension) shall be for a specified period of time and shall expire on the date or event stated and the license will be restored with no further action required. The Department shall issue a letter to the licensee and the licensee's known child welfare employer informing them of the final administrative decision and informing the licensee of his or her right to appeal the final administrative decision, including directions on where and when to appeal.

- b) Anytime a Child Welfare Employee License is suspended or revoked, and the person whose license was suspended or revoked also holds a license in a child welfare-related field that is monitored by the Illinois Department of Financial and Professional Regulation, OCWEL will notify the Illinois Department of Financial and Professional Regulation of the suspension or revocation. Licenses that are considered child welfare-related include the following:
 - 1) Licensed Clinical Professional Counselor;
 - 2) Licensed Professional Counselor;
 - 3) Licensed Temporary Professional Counselor;
 - 4) Licensed Marriage and Family Therapist;
 - 5) Licensed Clinical Psychologist;
 - 6) Licensed Clinical Social Worker;
 - 7) Licensed Social Worker; and
 - 8) Temporary Licensed Social Worker.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

Section 412.90 Preliminary Suspension by Board Action

- a) The Board may preliminarily suspend the license of a direct child welfare service employee without a hearing, simultaneously with the receipt of a complaint that contains sufficient indications of reliability and suggests that the licensee may pose an imminent danger to the public if allowed to continue practicing direct child welfare services pending investigation or licensure action or pursuant to Section 412.50(a)(2) or (12). OCWEL shall notify the licensee and the licensee's known child welfare employer of the preliminary suspension within two business days. The Preliminary Suspension Notice will inform the licensee that, if requested within 14 days after the date of the Notice, a hearing will be scheduled. If requested, a post-preliminary suspension hearing will be scheduled with the Administrative Hearing Unit within 30 calendar days after the request for the hearing, but will be limited to the question of whether preliminary suspension is warranted. The Notice of Preliminary Suspension Hearing shall be sent to the licensee and the known child welfare employer of the licensee. A Preliminary Suspension Notice shall state that the preliminary suspension will expire at the conclusion of the OIG investigation and any administrative or court action following the investigation. The Notice shall also contain a short statement explaining the basis of the Board's decision that the complaint contained sufficient indications of reliability and suggested that the licensee may pose an imminent danger to the public if allowed to continue practicing direct child welfare services pending licensure action or pursuant to Section 412.50(a)(2) or (12). A full hearing on the charges will be offered if charges are filed following completion of the investigation. At the preliminary suspension hearing, the licensee can petition the ALJ for access to the complaint based on a showing that examination of the complaint is relevant to the preliminary suspension hearing.
- b) If the OIG determines not to pursue charges once a preliminary suspension has been issued, the OIG will notify OCWEL of its intent not to file charges. OCWEL will then notify the licensee and the licensee's employer, if the licensee's employer was notified of the suspension, that the temporary suspension has been lifted.
- c) The ALJ shall prepare a recommendation with findings of fact and conclusions of law as to whether the preliminary suspension was warranted. The ALJ shall submit the hearing record and recommendation to the Board. The ALJ shall submit the recommendation to all parties and notify all parties of the availability of the hearing record. The Board shall have the decisionmaking authority.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

Section 412.100 Reinstatement of Revoked, Suspended or Relinquished License

- a) A former licensee may be reinstated by the Board when it is in the best interest of the public to do so, or when the former licensee can show that the facts warranting prior licensure action or investigation have been remedied or changed. A former licensee may request the reinstatement of his or her revoked, suspended or relinquished license by submitting a request to the Board through OCWEL that provides specific information that supports the request.
- b) A request for reinstatement may be submitted in writing to OCWEL no earlier than 30 business days after receipt of the written notice of license suspension or revocation or relinquishment during a pending CWEL investigation or licensure action.
- c) OCWEL shall notify the OIG and provide any documentation within 10 days after receipt of a request for reinstatement of a license. The OIG may file a written objection to the request within 30 days after receipt of the notice from OCWEL.
- d) The Board shall consider any prior recommendation of an ALJ, charges filed, and a report or sworn statement by the OIG regarding evidence developed in the investigation, when considering an application to reinstate a license or grant a license that was relinquished during a pending licensure investigation or administrative proceeding. For the purpose of considering a request for reinstatement of a license, the Board shall review the facts developed during the investigation. The Board may request additional information from the OIG and/or the licensee.
- e) The Board may not reinstate a license when it has been determined by investigation and administrative hearing that it is not in the best interest of the public to do so. Considerations that will be reviewed when making a finding of "in the best interest of the public" include, but are not limited to, the nature of the offense for which the license was revoked, the period of time that has elapsed since the revocation, evidence of rehabilitation, and character references.
- f) Anytime a license that was suspended or revoked is reinstated, and the Department of Financial and Professional Regulation had been notified of the suspension or revocation, OCWEL will notify the Department of Financial and Professional Regulation.

**LICENSURE OF DIRECT CHILD WELFARE SERVICE
EMPLOYEES AND SUPERVISORS
June 1, 2015 – PT 2015.15**

Section 412.110 Severability of this Part

If any court of competent jurisdiction finds any rule, clause, phrase or provision of this Part to be unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portions of this Part.